## IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

CIVIL NO. 1:06CV336

_	(1:02CR105)	
ANTHONY ALLEN LEMAY	<b>'</b> , )	
Petitione	r, )	
Vs.	) )	ORDER
	)	

UNITED STATES OF AMERICA.

Respondent.

**THIS MATTER** is before the Court on Respondent's motion for summary judgment and upon referral by the District Court.

In accordance with *Roseboro v. Garrison*, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), Petitioner, who is proceeding *pro se*, is cautioned that he carries a heavy burden in responding to the Respondent's motion for summary judgment. Rule 56(e) of the Federal Rules of Civil Procedure provides:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

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This language means that if the Petitioner has any evidence to offer to

show that there is a genuine issue for trial, he must now present it to the

Court in a form which would otherwise be admissible at trial, that is, in the

form of affidavits or unsworn declarations. An affidavit is a written

statement under oath; in other words, a statement prepared in writing and

sworn before a notary public. An unsworn statement, made and signed

under the penalty of perjury, may also be submitted.

Affidavits or statements must be presented by the Petitioner to this

Court within thirty (30) days from the date of this Order. As stated by Rule

56(e), Petitioner's failure to respond may result in the action being

summarily dismissed.

IT IS, THEREFORE, ORDERED that the Petitioner is allowed thirty

(30) days from the date this Order is filed within which to respond, in

accordance with the provisions of Fed. R. Civ. P. 56(e), to Respondent's

motion for summary judgment.

Signed: August 2, 2007

Dennis L. Howell

United States Magistrate Judge